

MEMORANDUM

From: Donald D. Campbell¹

To: Chief Justice Maura D. Corrigan, Michigan Supreme Court
and Justices of the Michigan Supreme Court

Re: Recommended Michigan Standards for Imposing Lawyer
Sanctions

Date: September 12, 2002

On June 27, 2000, this Court adopted the ABA Standards for Imposing Lawyer Sanctions and directed the Michigan Attorney Discipline Board (ADB) to submit a proposal concerning permanent Michigan Standards. On June 26, 2002, the ADB presented to the Court its proposed Michigan Standards for Imposing Lawyer Sanctions. I ask that the Court consider this memorandum and the accompanying recommendations in deciding whether to adopt the ADB's proposal.

I believe the ADB's proposal contains serious flaws. The ADB proposed Standards repeatedly criminalize conduct that does not violate the MRPC. The ADB adopts terms and definitions that conflict with either the MRPC or the Michigan Court Rules (MCR). Several of the ADB's proposed Standards purport to cover violations with no rational relationship to the language in the proposed Standard. Also, the ADB failed to provide a sanction for at least two significant MRPC (specifically 3.5(c) and 6.5).

Standards for Imposing Sanctions should promote consistency in discipline, produce reasoned decisions, and facilitate appellate review. Grievance Administrator v Lopatin, 462 Mich 238 (2000). The ADB proposal calls for "flexibility and creativity" in divining sanctions. Michigan's disciplinary system does not need "flexibility and creativity". It needs a set of principles and guidelines that will ensure that sanctions are fair for the offending lawyer, consistent with discipline imposed upon other lawyers who committed similar offenses, and will provide predictability for both the parties and the appellate bodies. The ADB's proposed Standards fall far short of the mark set by the Court. I believe that the attached recommendations are truer to the Court's principles and provide a better example of what the Court should adopt as a set of standards.

¹Since 1993, I have been an associate counsel for the Michigan Attorney Grievance Commission. Previously, I served as an Assistant Oakland County Prosecuting Attorney. The suggestions and opinions in this memorandum and the attached Recommended Michigan Standards for Imposing Lawyer Sanctions reflect my views and not necessarily the views of the Michigan Attorney Grievance Commission.

That said, the attachment, while preferable to the ADB's proposal, is not the best format for determining sanctions in lawyer disciplinary cases. I believe that the best way to achieve the goals articulated in Lopatin is the adoption of formal disciplinary guidelines, in a format consistent with the criminal sentencing guidelines long in use. Rather than applying factors in aggravation and mitigation that are assigned no particular value, parties and the tribunal should have recourse to specific variables involving that attorney's prior record and offense(s). The variables should be weighed in considering the individual violations when imposing lawyer sanctions.

My experience with the MRPC and the disciplinary system, as well as my experience as a criminal prosecutor, leads me to believe that the Court could reasonably expect a Disciplinary Guidelines Committee, similar to the one employed to recommend criminal sentencing guidelines, to produce a detailed set of guidelines covering virtually every disciplinary offense in no more than 6 months. The Court could then adopt effective Michigan Guidelines for Imposing Lawyer Discipline within a year from when any such a Commission began its work.

I hope that the Court will consider adopting a set of formal guidelines, rather than the proposed general standards. I believe the critique and recommendations attached will help the Court understand that the ADB's proposed Standards are inadequate. While my recommendations are an improvement upon the ADB's effort, these recommendations alone are not sufficient to achieve the goals of the Court set forth in Lopatin. True and fair reform in lawyer sanctions can only be achieved through the creation of formal guidelines for disciplinary violations.

I would be happy to discuss this matter further with you or other interested persons.

/DDC